

1 of notification. We've done it in other permits I know.

2 EXECUTIVE OFFICER BISHOP: Well, actually, my  
3 recollection is we tried to do it with Boeing and  
4 determined we didn't have the legal authority to make them  
5 do the notification we wanted, which was to put their data  
6 up on a website. That was what I remember.

7 I would prefer that you direct me to continue  
8 working with the Health Department, because they're the  
9 lead agency on this. It's not appropriate for us to get  
10 in the middle of that. But I would be happy to continue  
11 that work with the Health Commission, which as I said I  
12 have been talking to.

13 BOARD MEMBER CLOKE: Could we put something in  
14 here that says -- maybe this is to you, Mr. Levy. I'm not  
15 sure. Could we put something in here that's G, which is,  
16 you know, at the appropriate time Health Department  
17 notification, public notification will be -- I mean, I  
18 don't know what the language should be. But I'm looking  
19 for something to put forward this intention of public  
20 notification.

21 SENIOR STAFF COUNSEL LEVY: We could certainly do  
22 that.

23 BOARD MEMBER CLOKE: Do you want to work on some  
24 language, something really simple that allows John to not  
25 only go ahead and talk to the Health Department, but

1 something that doesn't preclude him in any way from  
2 talking to the applicant and working out a good system for  
3 everybody.

4 EXECUTIVE OFFICER BISHOP: I'm not following what  
5 you're looking for. I'm sorry.

6 BOARD MEMBER CLOKE: I want to make it possible  
7 for you to go ahead and work with the Health Department to  
8 consult with the applicant and any other appropriate  
9 person. All I want is a placeholder in here that says at  
10 the appropriate time, public notification -- system for  
11 public notification or public information will become part  
12 of the permit. I don't know what the right language is.  
13 I want to put the intention --

14 SENIOR STAFF COUNSEL LEVY: I'm unclear on two  
15 different things. You seem to be giving John direction --  
16 we don't need to give John direction in the order itself.

17 BOARD MEMBER CLOKE: No. Not at all. I need the  
18 simplest possible placeholder in the order.

19 CHAIRPERSON NAHAI: Whatever direction it is you  
20 want to give John, we wouldn't put it in the order.

21 BOARD MEMBER CLOKE: But I want to put the  
22 direction there's going to be public notification in the  
23 order. But how he goes about it is up to him.

24 SENIOR STAFF COUNSEL LEVY: Who?

25 BOARD MEMBER CLOKE: John.

1            SENIOR STAFF COUNSEL LEVY: You want the order to  
2 say John would notify the public? I'm sorry. I'm really  
3 confused.

4            EXECUTIVE OFFICER BISHOP: No. I think I know  
5 what you're trying to say. I'm just not sure how to get  
6 there.

7            What you would like to do is have me work with  
8 the permittee and Public Health Department and at some  
9 future date figure out a scheme so the public gets  
10 notified when there is a spill.

11          BOARD MEMBER CLOKE: Or has access to the  
12 information.

13          SENIOR STAFF COUNSEL LEVY: I don't think that's  
14 appropriate.

15          CHAIRPERSON NAHAI: That's a direction I think we  
16 can give you. What we couldn't do which we tried to do  
17 the last time with Boeing was to get the permittee to  
18 dedicate a website and post the results.

19          BOARD MEMBER CLOKE: I'm not asking for that.

20          CHAIRPERSON NAHAI: I understand that. But since  
21 we couldn't do that before and since we've both the  
22 notification to the Public Health Department here that's  
23 immediate -- I think that's what that word means -- and  
24 one to us which is in 24 hours, that's what that means.  
25 The only thing we can do beyond that is direct the EO to

1 work with the permittee, work with the Public Health  
2 Department to come up with a system of public  
3 notification.

4 BOARD MEMBER CLOKE: Maybe we could -- could we  
5 say there would be a reopener if such a system were to be  
6 developed?

7 EXECUTIVE OFFICER BISHOP: This would be a part  
8 of a reporting program. And I have the authority already  
9 to increase the reporting program. So if you directed me  
10 to work on this and if I can figure out a way, I will come  
11 back to you with how we're proposing to address it. And  
12 we can add it to the reporting portion of the program. I  
13 didn't think of that before.

14 BOARD MEMBER CLOKE: Okay. So do we need to do  
15 anything to the permit at this point or not?

16 SENIOR STAFF COUNSEL LEVY: I think John has his  
17 directions, and I think that's adequate.

18 BOARD MEMBER CLOKE: Then I had a question which  
19 maybe more belongs to the applicant than to you. But I  
20 want to give you a chance to help me understand what -- as  
21 you understand it, what was being said? I'm going to give  
22 the applicant the same chance.

23 I heard more than once we're doing a really good  
24 job. We've done filtration. We've done denit- -- we've  
25 done this. We've done that. I saw the photographs and

1 read the report. And you know, I certainly would agree  
2 with that.

3 I don't understand how you go from that to  
4 therefore these things shouldn't be in the permit. And  
5 I'm going to give him a chance to answer that. But I'd  
6 like you to help me understand if you can. If you can't,  
7 just pass on it.

8 MUNICIPAL PERMITTING UNIT CHIEF

9 PONEK-BACHAROWSKI: I would agree Burbank has done a great  
10 job of revamping their plant. They can meet almost all  
11 the limits. There are a couple that would be problematic.

12 However, the water quality standards don't have  
13 anything to do with nice guy/bad guy. This is stuff all  
14 from statutes, regulations. This is nothing  
15 reward/reprimand. I would say our hands are tied. We've  
16 given them the type of standards that are required by law  
17 and regulations.

18 BOARD MEMBER CLOKE: I think that was important  
19 to put into the record they've done a good job, that we  
20 recognize that. But that we don't hand out permits based  
21 on who's good and who's bad, but based on permits based  
22 on -- just like everybody needs a driver's license whether  
23 they're good driver or bad driver.

24 WATER RESOURCES CONTROL ENGINEER CUEVAS: I'd  
25 like to add that in addition they are a POTW, and they do

1 take waste from different industries and different  
2 households. And their effluent or their influent,  
3 whatever comes into the plant, is not always going to be  
4 the same. So they never know what they're going to get.  
5 And because they do have a biological system, it's  
6 susceptible to changes in temperature, changes in pH.  
7 It's a biological system they use to remove pollutants in  
8 addition to settling. So their process, even though they  
9 upgraded it, it's still very vulnerable at times.

10 So they still might have an issue with some of  
11 the other pollutants that they think they have a grasp on.  
12 That's why it's important they continue doing  
13 pre-treatment work and source control in addition to all  
14 the upgrades they've done. And that might be a way of  
15 handling some of these pollutants.

16 BOARD MEMBER CLOKE: Then the source control is  
17 up to the applicant. It's not in our tentative.

18 WATER RESOURCES CONTROL ENGINEER CUEVAS: They  
19 have requirements. They have an Attachment P, which is a  
20 pre-treatment requirements. And there is 40 CFR section  
21 that requires them to have a pre-treatment. They do have  
22 an EPA-approved pre-treatment program which they have to  
23 implement.

24 BOARD MEMBER CLOKE: Thank you.

25 CHAIRPERSON NAHAI: Thank you. Bonnie, do you

1 have questions of staff as well or just the permittee?

2 BOARD MEMBER HERMAN: Both I guess.

3 CHAIRPERSON NAHAI: Let's do staff.

4 BOARD MEMBER HERMAN: Thank you, Mr. Chairman.

5 On page 14-66 under item 3d, it talks about the  
6 economic considerations. And it says they've been done.  
7 But there's no indication here of what the findings are.  
8 And this question is to staff and also to Mr. Anderson of  
9 what compliance will cost and how long will it take.

10 WATER RESOURCES CONTROL ENGINEER CUEVAS: On that  
11 economic consideration uses a report that was done by  
12 SAIC. They were contracted to do an economic analysis  
13 when the County Sanitation District permits were adopted.  
14 And they looked at all the CTR values and limits based on  
15 the CTR constituents. In addition, they looked at  
16 complying with bis(2-ethylhexyl)phthalate, which is an  
17 issue in this permit. And they felt in the short term by  
18 doing plant optimization and studies on how to better  
19 manage their plant and source control and pre-treatment  
20 that that was all that would be needed to comply with the  
21 effluent limitations. They did not think that any  
22 additional capital improvements would be needed for them  
23 to comply with the permit. And if it were needed, what  
24 they thought would be -- would be needed to do would be to  
25 add carbon to the filters and just upgrade the filters a

1 little bit more. Use a different media in the filters  
2 than what was there.

3           What we've seen with other POTWs that have  
4 similar permits, none of them have had to add additional  
5 treatment beyond which they've already had to comply with  
6 the CTR constituents. That's why we felt -- we didn't  
7 think that in Burbank's case they were going to have to do  
8 capital improvement projects. It was economically  
9 feasible for them to meet these requirements, especially  
10 since they were given a time schedule to come up with  
11 alternative solutions if they were to come up with some  
12 kind of problematic constituent. And in addition, they're  
13 subject to water recycling requirements, which they have  
14 to meet the Title 22 requirements under that separate  
15 order anyway to be able to use recycled water and serve it  
16 to the public under the separate order.

17           In a meeting, we asked them, do you think you  
18 would have to do additional capital improvement projects  
19 to meet this? And they said no. The only difference is  
20 by making these limits in effluent limitation they're  
21 subject to liens and fines. So that's really the driver.

22           BOARD MEMBER HERMAN: If they do the daily  
23 testing that you're requiring, the weekly testing --

24           WATER RESOURCES CONTROL ENGINEER CUEVAS: Monthly  
25 testing for effluent limits that have a limit. Like



1 priority pollutants, they have to monitor those on a  
2 monthly basis.

3 BOARD MEMBER HERMAN: And they're already doing  
4 it?

5 WATER RESOURCES CONTROL ENGINEER CUEVAS: For  
6 some of them, it's monthly. Some of them, it's quarterly.  
7 Since they have a monthly limit, they take a sample. If  
8 it's above the effluent limit, then they take another  
9 sample and average that out within the month to give them  
10 a chance to come into compliance with the monthly limit.

11 BOARD MEMBER HERMAN: Should I wait to speak to  
12 Mr. Anderson?

13 CHAIRPERSON NAHAI: Yes. Let's finish with staff  
14 first, because I think --

15 BOARD MEMBER HERMAN: I'll come back to  
16 Mr. Anderson and ask for his response to make sure you all  
17 are in sync on that.

18 We started off with the cadmium. I was wondering  
19 if the same discussion is true about mercury.

20 WATER RESOURCES CONTROL ENGINEER CUEVAS: No.  
21 It's not the same for Mercury. Cadmium and lead are in  
22 the same boat, if you can call it, both with cadmium and  
23 lead are in the TMDL. Mercury is not. The issue on  
24 mercury stems for how you interpret data. A detected but  
25 not quantified data point is acceptable to be treated

1 under consideration for reasonable potential. The  
2 discharger disagrees. They think that DNQ value be  
3 treated like a non-detect, but the SIPs says otherwise.  
4 We're following the SIP procedures. It's validated point.  
5 It was two data points instead of one. And if you give me  
6 a chance, I can find it in the agenda.

7 BOARD MEMBER HERMAN: That's okay.

8 WATER RESOURCES CONTROL ENGINEER CUEVAS: But  
9 they had two hits or two DNQ values that triggered the  
10 need for reasonable potential and limit.

11 BOARD MEMBER HERMAN: What about dealing with  
12 that if there's an exceedance of Mercury? Is there  
13 another test on top of?

14 WATER RESOURCES CONTROL ENGINEER CUEVAS: We have  
15 a limit for mercury, and I think they have an interim  
16 limited based on the MEC. But, yeah, for Mercury they  
17 have a daily maximum and a monthly average. So if they  
18 exceed the daily maximum, that would be it. But for the  
19 monthly average, they could be a sample to try to come  
20 into the compliance with the monthly average.

21 BOARD MEMBER HERMAN: Thank you. There was a  
22 slide, chronic toxicity. I think it was about number ten.  
23 And I just need a quick explanation. It has a number in  
24 it that doesn't have any relativity to me. So I wonder if  
25 you can put this in context and talk about the chronic

1 toxicity of the effluent exceeds the monthly median of one  
2 something. The discharger is required to implement  
3 accelerated chronic toxicity.

4 EXECUTIVE OFFICER BISHOP: That toxic unit -- one  
5 toxic unit, that's what TU means. C is chronic. You  
6 could have a TUA for acute and it's a calculation that  
7 that is derived from the percentage of impact on the  
8 organism.

9 BOARD MEMBER HERMAN: That's fine. But what does  
10 that mean in the real world in terms of its threat to  
11 public health and aquatics? One out of what? Does it go  
12 into little decimals? I mean, how threatening is one?

13 WATER RESOURCES CONTROL ENGINEER CUEVAS: If they  
14 conduct a toxicity test and they get one TUC, that's a  
15 good number. Anything above one is bad. That means  
16 something died, something didn't reproduce, something  
17 didn't grow. The discharger is supposed to do a sample  
18 with three different species of their effluent to  
19 determine which species is most sensitive. And then based  
20 on that screening, that's the species they use for the  
21 other regular monitoring they do. And if they pass the  
22 toxicity test and they get a result of 1, 100 percent  
23 survival.

24 BOARD MEMBER HERMAN: Okay. Let's go on to more  
25 science. On slide 11, where you talk about bis, et

1 cetera, et cetera. What the heck is that?

2 MUNICIPAL PERMITTING UNIT CHIEF

3 PONEK-BACHAROWSKI: The one that nobody can say?

4 Bis(2-ethylhexyl)phthalate, it is a compound. It's a  
5 plasticizer. It's found in PVC pipe and other plastics,  
6 home plastic, housewares. And it can cause health  
7 problems both -- I can think inhalation but definitely if  
8 it's drunk.

9 BOARD MEMBER HERMAN: The number four whatevers?

10 MUNICIPAL PERMITTING UNIT CHIEF

11 PONEK-BACHAROWSKI: That's four microgram per liter. And  
12 that's the maximum contaminant level for drinking water.  
13 If you drink above that, you'll have some adverse health  
14 effect.

15 BOARD MEMBER HERMAN: Okay. I was just concerned  
16 about the item on 14-347 about the sanitary sewer  
17 situation being duplicative, but I think we've covered  
18 that. So I'm done until we come back to Mr. Anderson.  
19 Thank you.

20 BOARD MEMBER LUTZ: I don't have any questions.  
21 All answered.

22 VICE CHAIRPERSON DIAMOND: I just have one for  
23 staff. And that is I want to go back to the toxicity  
24 issue, because there seemed to be inconsistency. On the  
25 one hand, Dr. Gold mentioned and I think you agreed there

1 have been exceedances for toxicity in the -- eight  
2 exceedances or so in the last two years. On the other  
3 hand, Mr. Anderson from Burbank argues that the issue of  
4 toxicity has gone away since they've implemented their new  
5 processes. Where is the answer to that?

6 MUNICIPAL PERMITTING UNIT CHIEF

7 PONEK-BACHAROWSKI: Well, in the last permit that Burbank  
8 had, they had no requirement for toxicity identification  
9 evaluation or for toxicity reduction. Before when they  
10 thought they knew the cause of the toxicity, they sort of  
11 stopped there, which would have been the ammonia which has  
12 now since been removed. But now we know there's other  
13 reasons you can have toxicity. You can have synergistic  
14 effects between compounds and that type of thing. So  
15 what's required is this one TUC trigger. And if that's  
16 been exceeded so many times, then they have to go into  
17 this TIE/TRE where they have to actually -- if they can't  
18 show it's from ammonia or something they suspect, they  
19 actually have to go and identify it. And there's a whole  
20 bunch of steps in the permit for that.

21 WATER RESOURCES CONTROL ENGINEER CUEVAS: I  
22 wanted to say one of your questions was since they did do  
23 the NDN, has toxicity been present? And the answer is  
24 yes. In page 14-91, you can see that they did have  
25 chronic toxicity over the one TUC. In July 2004, they had

1 5.56. In August 2004, they had 3.13. So even though they  
2 have done the upgrade, they still have occasional cases  
3 where there is toxicity in the effluent.

4 MUNICIPAL PERMITTING UNIT CHIEF

5 PONEK-BACHAROWSKI: And the new requirement requires them  
6 to follow up on what.

7 VICE CHAIRPERSON DIAMOND: And what is your  
8 feeling about the comment that was made that the  
9 compliance schedule for toxicity is too long?

10 MUNICIPAL PERMITTING UNIT CHIEF

11 PONEK-BACHAROWSKI: I think he was talking about actually  
12 toxic. It's the two or three metals. One of them is  
13 copper. Copper is difficult to deal with because of so  
14 much copper piping in households. We just felt that they  
15 need a longer period of time to try to figure out how they  
16 could reduce this copper. Being a lot of it's not things  
17 they can do, because it's from copper pipes coming into  
18 our households, so we felt a longer time was warranted on  
19 that. And they are going to do studies on how they're  
20 going to reduce those concentrations down to acceptable  
21 water quality based standards.

22 What was the other one? I can't remember.

23 VICE CHAIRPERSON DIAMOND: Do you think they need  
24 as much time for the other metals as they do for copper?  
25 Does it make sense to change the time line for different

1 metals, or is it -- do you need to have the compliance  
2 schedules the same?

3 WATER RESOURCES CONTROL ENGINEER CUEVAS: The  
4 discharger hasn't given us a plan how they're going to  
5 proceed with this. Other dischargers like County San  
6 during the comment period, they have provided their  
7 strategy or game plan on how they're going to tackle  
8 pollutant by pollutant. But we haven't received that type  
9 of information from Burbank. The only thing I had to go  
10 on to give them a compliance schedule was the high levels  
11 present in their effluent. So I know based on the past  
12 they can't currently meet those levels. That's why they  
13 need an interim limit and they need a compliance schedule.  
14 But in terms of how much time is needed, I have no idea.

15 VICE CHAIRPERSON DIAMOND: How did you decide on  
16 how much time to give them?

17 WATER RESOURCES CONTROL ENGINEER CUEVAS: I gave  
18 them the maximum allowed by the SIP or the TMDL or the  
19 Basin Plan, whichever was the authorizing provision  
20 document.

21 VICE CHAIRPERSON DIAMOND: How long is that  
22 again? Remind me.

23 WATER RESOURCES CONTROL ENGINEER CUEVAS: The  
24 TMDL gives them until 2011. The CTR SIP gives them until  
25 May 2010. And the Basin Plan gives them five year from

1 the effective date of the permit. So it's about five  
2 years. Usually it's five years.

3 VICE CHAIRPERSON DIAMOND: That's what they have  
4 in the permit?

5 WATER RESOURCES CONTROL ENGINEER CUEVAS: For the  
6 TMDL-based cadmium and lead, they have until 2011. For  
7 the CTR-based ones, they have May 2010. And for  
8 bis(2-ethylhexyl)phthalate, they have until five years  
9 from the permit adoption.

10 EXECUTIVE OFFICER BISHOP: The May 2010 is the  
11 date you're looking for. That's three and a half years.

12 BOARD MEMBER LUTZ: Mr. Chair, can I follow up on  
13 one question related to copper as well? There is a study  
14 right now that they're working on, correct, they told us  
15 about?

16 MUNICIPAL PERMITTING UNIT CHIEF

17 PONEK-BACHAROWSKI: They are required to do a study,  
18 because you will be giving them a compliance schedule with  
19 interim limits, which means they have to start looking at  
20 how they're going to reduce it in that short period of  
21 time.

22 EXECUTIVE OFFICER BISHOP: Yes, they are.  
23 They're working on a water effects ratio. And they're  
24 looking at a translator study. Both of those modify the  
25 standard. So they're not really reducing the copper.



1 They're modifying the standard based on its toxicity to  
2 the receiving water.

3 BOARD MEMBER LUTZ: Okay. So how will that  
4 study -- and do we know when it will be completed --  
5 effect this permit?

6 MUNICIPAL PERMITTING UNIT CHIEF

7 PONEK-BACHAROWSKI: Well, if they get a water effects  
8 ratio or translator, that would be through the TMDL  
9 process. At that point in time, we can reopen the permit  
10 and do accordingly the changes.

11 EXECUTIVE OFFICER BISHOP: Both of those effect  
12 the standard. They come back to you as a standards action  
13 in front of the Board like we're doing this afternoon  
14 hopefully on the Calleguas Creek water effects ratio. We  
15 would bring that back if that was approved by the Board  
16 and put in the Basin Plan and approved by OAL, EPA. Then  
17 we could reopen the permit and make the changes.

18 BOARD MEMBER LUTZ: Do we know when it will be  
19 done? Do we have any idea? Maybe we can ask Mr.  
20 Anderson. Thank you.

21 CHAIRPERSON NAHAI: I've got a couple of  
22 questions.

23 Regarding the Title 22 limits again, just to  
24 clarify, the statement was made that a pre-condition for  
25 including them would be a determination that there is a

1 hydrogeologic connection or pathway between the surface  
2 and groundwater, which you are attempting to protect. I  
3 completely understand that preventative measures are a lot  
4 better than curative ones. But how do you respond to the  
5 statements that they made? And I know you covered this a  
6 bit in the cross-examination. But I wanted to get it even  
7 more clearly on the record. How do you respond to the  
8 testimony that there is upwelling in the Glendale Narrows  
9 and that therefore there really is no hydrogeologic  
10 connection to speak of?

11 MUNICIPAL PERMITTING UNIT CHIEF

12 PONEK-BACHAROWSKI: Well, there at times is upwelling.  
13 There's no doubt about it. That's why when that concrete  
14 channel was designed, it was designed with an earthen  
15 bottom.

16 But the data I was mentioning to you about was  
17 monitoring wells in the vicinity of that unlined area  
18 which show groundwater is not at the surface. Groundwater  
19 can be as deep as 60 feet below the land surface. And  
20 even taking into account the depth of the walls of the  
21 channel, which are about 20 feet, that still puts  
22 groundwater at about 40 feet below land surface, which  
23 tells me it's not at the surface and there's actually a  
24 mixing of water between surface and groundwater.

25 WATER RESOURCES CONTROL ENGINEER CUEVAS: I

1 wanted to add that the Basin Plan has groundwater recharge  
2 designated for that reach as an existing beneficial use.  
3 So whenever the Basin Plan was adopted, it was adopted to  
4 protect that use. And it's saying this happens in this  
5 reach. So it's already in the Basin Plan. EPA approved  
6 that designated beneficial use in the Basin Plan. The  
7 discharger is saying you have to prove this is going on  
8 all the time. We're saying it's already a designated  
9 beneficial use. We have to protect it because it is in  
10 our Basin Plan.

11 If it were true that there's never a mixing or  
12 the surface water never effected the groundwater, then  
13 that should be delisted from the Basin Plan, but that  
14 takes a use attainability analysis and it takes a Basin  
15 Plan action. And this Board would say, okay, we believe  
16 it. There is no mixing of surface and groundwater ever.  
17 But that doesn't make sense, because every time -- regular  
18 surface boundary conditions when surface -- when two  
19 things mix, there's always mixing. There might be a net  
20 overall water flow this way, but they can't say that the  
21 water is not mixing, that some of the surface water isn't  
22 going down and some of the groundwater isn't going up.  
23 There is that interaction.

24 And we're basing our action not only on science  
25 and on the existing beneficial use in our Basin Plan

1 that's designated and approved by EPA, we're basing it on  
2 a State Board decision that said it was appropriate for us  
3 to use MCLs which are a Basin Plan water quality to  
4 protect the groundwater beneficial use that exists in this  
5 part of the L.A. River and also exists in the receiving  
6 water for Whittier Narrows.

7 CHAIRPERSON NAHAI: I understand that. On the  
8 other hand, we have in the past also, for instance, given,  
9 you know, exemptions when there is high velocity in the  
10 L.A. River and notwithstanding the fact that there are  
11 regulations that we're bound by and which you just pointed  
12 out. We want to listen to our permittees as well. If we  
13 come across a situation where it's to insist strictly upon  
14 a regulation where we have discretion, where to insist  
15 strictly upon the regulation would impose costs that are  
16 not warranted, we've tried our best to provide relief  
17 under those circumstances. So I mean, I take Blythe's  
18 explanation of this that it is not at all established that  
19 there is just upwelling in this area and that there really  
20 is a real interest to be protected.

21 MUNICIPAL PERMITTING UNIT CHIEF

22 PONEK-BACHAROWSKI: Mr. Nahai, there are remedies. And  
23 the remedy would be for these dischargers to get together  
24 and bring evidence to the Regional Board that there should  
25 be a de-designation of that groundwater recharge in that

1 particular reach of the river. The other thing would be  
2 for them to do an attenuation study to show by the time it  
3 gets to that portion of the river and it's recharged there  
4 that it could never exceed any of the MCLs in the  
5 groundwater. That's an option too.

6 CHAIRPERSON NAHAI: Thank you.

7 The permittee stated there are a number of  
8 constituents that are included as to which effluent  
9 permits are included in the permit but as to which RPA has  
10 not been conducted. Could you respond to that? I mean, I  
11 know about the TMDL base limits. But how about other  
12 constituents as to which RPA has not been completed?

13 WATER RESOURCES CONTROL ENGINEER CUEVAS: We said  
14 there was reasonable potential but there was tier three  
15 reasonable potential where you use best professional  
16 judgment. Tier one and tier two is a calculated -- tier  
17 one is when the effluent exceeds it. Tier two is when the  
18 receding water exceeds it and it's present. But we use  
19 the tier three approach and the best professional judgment  
20 to put in those limits for like chloride, TDS. The Basin  
21 Plan designates different concentrations for those  
22 pollutants depending on which reach or different reaches  
23 of the water bodies. So it's very specific to that  
24 discharge point and that receiving water.

25 CHAIRPERSON NAHAI: Okay. So as to even these

1 constituents, there was a best professional judgment  
2 process that was gone through before including them in the  
3 permit in these limits?

4 WATER RESOURCES CONTROL ENGINEER CUEVAS: Yes.  
5 Plus there was a backsliding issue. They were included in  
6 the previous two permit rounds. If we remove them, we  
7 need to have a reason why we need to remove them, and we  
8 didn't feel there was a reason to remove them.

9 CHAIRPERSON NAHAI: Thank you.

10 There was an implication that the SSO provisions  
11 are somehow discriminatory with respect to this permittee,  
12 that they're unusual. I think somebody may have actually  
13 used the word punitive. Could you respond to that,  
14 please?

15 MUNICIPAL PERMITTING UNIT CHIEF

16 PONEK-BACHAROWSKI: I'm actually going to let our  
17 pre-treatment coordinator Dan Radulescu who's most  
18 familiar with this WDR explain about the concept of this  
19 level playing field and such. He can tell you what's  
20 coming up as far as future regulation.

21 EXECUTIVE OFFICER BISHOP: But before you jump  
22 into that, I think what you're getting at is this unique  
23 to Burbank's permit, which it is not. We have required  
24 additional SSO reporting on a number of permits for POTWs.  
25 And this is not unique to their permit.

1 CHAIRPERSON NAHAI: So Burbank isn't being  
2 singled out to some extraordinarily stringent requirement?

3 EXECUTIVE OFFICER BISHOP: No.

4 CHAIRPERSON NAHAI: Okay. The permittee talked  
5 about including possibly groundwater limits apart from  
6 Title 22 limits. Can you comment on that?

7 MUNICIPAL PERMITTING UNIT CHIEF

8 PONEK-BACHAROWSKI: Well, you're saying a receiving water  
9 limitation?

10 CHAIRPERSON NAHAI: Receiving water limitation.

11 MUNICIPAL PERMITTING UNIT CHIEF

12 PONEK-BACHAROWSKI: That's how we wrote it originally.  
13 They said they couldn't control what was in the  
14 groundwater, so they'd rather have an end of pipe. That  
15 was their choice. They seem to be changing now, but that  
16 was their choice.

17 CHAIRPERSON NAHAI: Thank you for that.

18 Michael, I had a question to pose to you. The  
19 record again contains the contention that an  
20 impracticability analysis should have been performed here.  
21 Can you tell us legally what the position is there of the  
22 Board?

23 SENIOR STAFF COUNSEL LEVY: This is not like  
24 reasonable potential. The regulation says for continuous  
25 discharges, all permit effluent limitation standards and

1 prohibitions including those necessary to achieve water  
2 quality standards shall unless impracticable be stated as  
3 average weekly and average monthly discharge limits.

4       What the discharger is trying to claim is that we  
5 have to go through some imformalized process called an  
6 impracticability analysis which would presumably be  
7 something akin to a reasonable potential analysis.

8       Reasonable potential has a formalized process.  
9 This regulation doesn't require that. The Board -- the  
10 staff report -- the order and the findings and the fact  
11 sheet make the determination that's impracticable. That  
12 determination is backed by evidence in the record, as you  
13 have heard, and the statement there is no impracticability  
14 analysis as such is just not an accurate -- it's really a  
15 misleading statement.

16       CHAIRPERSON NAHAI: Okay. Two or three more  
17 questions. One of our presenters brought our attention to  
18 an inconsistency with respect to TIE where the word "may"  
19 should be the word "shall." Did you have a response to  
20 that?

21       MUNICIPAL PERMITTING UNIT CHIEF

22 PONEK-BACHAROWSKI: We need to look at that passage.

23       CHAIRPERSON NAHAI: It was permissive in one  
24 section and mandatory in another. I think it had to do  
25 with when they had to do a toxicity reduction. I think it



1 was Dr. Gold who said that.

2 WATER RESOURCES CONTROL ENGINEER CUEVAS: I'm not  
3 sure, but I think Mr. Gold was referring to agenda page  
4 14-214, what is the monitoring reporting program, page  
5 T-13. Under C it says the discharger may initiate a TIE  
6 as part of the TRE to identify positive toxicity. I think  
7 that's what he was referring to.

8 CHAIRPERSON NAHAI: And should that be that they  
9 must, that they "shall" rather than "may"? I think that's  
10 the point.

11 WATER RESOURCES CONTROL ENGINEER CUEVAS: It  
12 would be extra work for the discharger. Our main purpose  
13 for them to reduce the toxicity. So that would be to do a  
14 TRE. But when you do a TIE, you identify the toxic  
15 pollutant that's causing the toxicity. That's not always  
16 possible. But if you direct us to do that, we could make  
17 it a mandatory, not an option.

18 CHAIRPERSON NAHAI: How do you properly do a TER  
19 if you don't do the TIE? Isn't one a pre-condition of the  
20 other? Don't you have to identify --

21 WATER RESOURCES CONTROL ENGINEER CUEVAS: The EPA  
22 protocol has them do certain steps and tests and  
23 titrations to see like a process of elimination. If it  
24 passes this test, then it's this or it's not this certain  
25 group of pollutants. Like it's not a metal or organic.

1 It's like a process of elimination. Sometimes they can  
2 only narrow it down to a group of pollutants, not  
3 necessarily identifies exactly which pollutant itself  
4 caused it. But we can make it a requirement.

5 CHAIRPERSON NAHAI: Okay. The other statement  
6 that Dr. Gold made was with respect to our mass limits in  
7 this permit, that somehow those limits are distorted by  
8 the fact we've got a nine million gallon per day plant,  
9 which really only utilizes about 5.8. Is there a  
10 distortion? Is that something to be concerned about?  
11 Could you respond to that for us?

12 WATER RESOURCES CONTROL ENGINEER CUEVAS: When we  
13 give them the mass-based limits, they're required to be  
14 based on design. I can find it in the response to  
15 comments, but it's 40 CFR section. I understand that when  
16 the enforcement group is looking at exceedances, they look  
17 at the actual floor on that data to calculate what the  
18 appropriate mass quantity should be. And enforcement  
19 staff is here if you want to ask them. If you want me to  
20 direct to find the 40 CFR section, I can find it in  
21 response to comments to Heal the Bay's question.

22 CHAIRPERSON NAHAI: I want to know whether is  
23 this a matter of concern. Is there really a distortion  
24 that is happening here, or are we environmentally on safe  
25 ground in going with the permit as you have it?

1           WATER RESOURCES CONTROL ENGINEER CUEVAS: I think  
2 we're on safe ground based on that 40 CFR section that  
3 says how we're supposed to issue mass-based limits for  
4 POTWs.

5           MUNICIPAL PERMITTING UNIT CHIEF  
6 PONEK-BACHAROWSKI: And remember we have  
7 concentration-based too.

8           CHAIRPERSON NAHAI: Thank you. Those are my  
9 questions.

10           I think, Mr. Anderson, there were some questions  
11 for you.

12           BOARD MEMBER HERMAN: Thank you, Mr. Chairman.  
13 And thank you, Mr. Anderson, for all your presentation,  
14 your good attitude. And I know this is tough, and I  
15 really appreciate it. After we've had all these questions  
16 back and forth, and I'm being sort of business  
17 representative and I ask the question about the economic  
18 background. And I see it's \$100,000 a year roughly to do  
19 these tests. Is that what you have figured? And what  
20 other costs are involved over the next five years to meet  
21 compliance with this? Could you share that with us?

22           MR. ANDERSON: Yes, sure. Thank you. That's a  
23 good question.

24           In monitoring costs alone, we did a comparison.  
25 I had head of our lab look at what the MRP has in the

1 permit right now. And you have to make some assumptions  
2 as far as accelerated monitoring in different cases.

3 What's included in the permit at a minimum is an  
4 extra \$200,000 a year. Over the life of the permit,  
5 that's about a million dollars we're spending on  
6 additional monitoring from our '98 permit to this permit.  
7 So that's quite a bit more. One of those obviously is the  
8 additional analysis that has to be done for groundwater.  
9 We have groundwater analysis semi-annual now. We  
10 appreciate it got moved from monthly to semi-annual. At  
11 the same time, what I've heard today was it doesn't matter  
12 what the groundwater quality is; you're going to have  
13 these effluent limits. Well, if that's case, why am I  
14 trying to coordinate with DWP, have them run additional  
15 samples, do this additional analysis when in fact it has  
16 no bearing on my effluent limits? So it's an additional  
17 cost and additional coordination that I'm going need to  
18 do.

19 I spoke with their lab down there on some of  
20 these constituents how frequently they do them. They said  
21 for iron they're not going to do it again for three years.  
22 They don't have to. They have this study they do that --  
23 let me see if I can find what he called it. He calls it a  
24 vulnerability table. And so that determines how  
25 frequently they have to sample different constituents.

1 That is DHS that makes these requirements. And he said  
2 that arsenic and iron are sampled every three years is due  
3 next in November '07 and then for well six and April '08  
4 for well four.

5 So you know, we're going to have to do these  
6 analyses or pay L.A. DWP to do this analysis they're not  
7 doing themselves, and they're purveyors of the water.  
8 These are some of the additional cost analyses that the  
9 permit requires us to do.

10 BOARD MEMBER HERMAN: What about dealing or  
11 remediating the toxicity issue?

12 MR. ANDERSON: I'm sorry. On that question also,  
13 toxicity, as you know, it's difficult to know exactly  
14 what's causing toxicity, especially chronic. Many times  
15 you get false positives on chronic. Our last permit I  
16 believe required us if we get a chronic, we sample again.  
17 And if we have three positives in a row, then we do a TIE  
18 and a TRE.

19 I just called the plant manager because I didn't  
20 have the records. And he said actually we've had five  
21 through '04 and '05 was what he had. And we never had  
22 three in a row. We had two, and then we had some passing  
23 toxicity samples. Then we had one more hit in '05. '04  
24 we just had two exceeding one. So we never did the  
25 TIE/TRE in those two years, because we had three in a row.

1           So how much would it cost to reduce the toxicity?  
2   It's difficult to say, because I'm not sure at this point  
3   what's causing toxicity. If we did have to meet some of  
4   these other permit limits, number one, we're doing studies  
5   to see, you know, if that permit limit is really effecting  
6   the biology in the river. One of them is the copper water  
7   effects ratio study that was talked about. We are in the  
8   midst of that. All the data's collected, all the field  
9   sampling. A report should come out next year. We're  
10   expecting that next year. That's costing the City of  
11   Burbank \$200,000. City of L.A. has contributed \$500,000.  
12   So that for us is like 250 for every resident in the city  
13   of Burbank is having to pay, if you look at 100,000  
14   people.

15           But we believe that that study will show that the  
16   copper is not as bioavailable as is assumed under the CTR  
17   because of the specific type of water that is in the Los  
18   Angeles River. There's dissolved organic carbon and some  
19   other constituents that make it not as bioavailable. We  
20   spent money on that study. If that study shows the water  
21   effects ratio is not high enough or the levels of copper  
22   that we're still discharging are harmful, we'd have to  
23   look to upgrade our plant.

24           To upgrade our plant for copper -- and you don't  
25   usually, especially for metals, don't go on a constituent

1 by constituent basis. You do an upgrade like RO or you  
2 don't. If we did an RO, I think a couple of years ago we  
3 figured it would be about 20 million to upgrade our plant.  
4 And that's not including the brine line. Obviously --

5 CHAIRPERSON NAHAI: Well, let me stop you.  
6 There's nothing in this permit that requires you to  
7 upgrade for copper or go to RO or anything like that.

8 MR. ANDERSON: If we can't meet the compliance  
9 schedule.

10 CHAIRPERSON NAHAI: But I mean, I want to make  
11 sure that we don't, you know --

12 BOARD MEMBER HERMAN: But that gets to my --

13 CHAIRPERSON NAHAI: -- speculate out of this what  
14 is happening with respect -- you're doing studies. You're  
15 doing water effects ratios. The permit provides you with  
16 up to 2011 interim limits in the meantime. So this permit  
17 as it's being adopted at this moment does not impose on  
18 you any obligation to upgrade for copper.

19 MR. ANDERSON: We can do studies to meet those  
20 limits. Studies take a couple years. If the studies show  
21 that we still can't meet the copper limit, then we would  
22 have to do an upgrade within the compliance schedule is my  
23 understanding.

24 CHAIRPERSON NAHAI: But those are ifs. But this  
25 is not something that this permit is requiring of you

1 today.

2 MR. ANDERSON: The comment sometimes was made,  
3 well, you had five years to know about this copper limit.  
4 Well, if we're doing a study for a couple years, now we  
5 have -- and it turns out we still need to do an upgrade,  
6 now we have three years to design, build an RO plant. So  
7 it's just the compliance schedule issue I guess I was  
8 touching on.

9 BOARD MEMBER HERMAN: That really leads into my  
10 final question. And this is a question asking for  
11 speculation on your part. But just looking ahead, if the  
12 plant is operating on the five million and has the  
13 capacity for nine million, and one of our staff members  
14 mentioned the potential that we don't know what's going --  
15 you don't know what's going into the system on a  
16 day-to-day basis, do you know what the City is doing to  
17 prevent anything in terms of new City requirement in terms  
18 of building what's happening on the -- as they say, the  
19 other end of the pipe to protect your system from taking  
20 into anything that would create a catastrophic episode?

21 MR. ANDERSON: Absolutely. We have a very robust  
22 pre-treatment program. And that pre-treatment program  
23 requires our dischargers to meet certain local limits and  
24 the federal limits before they discharge. So we have not  
25 had a plant upset in years because our pre-treatment



1 program is so strong. The EPA regulations require that  
2 for SIUs that we regulate them to do quarterly. We  
3 actually take it a couple steps down.

4 We regulate a lot more industries than we are  
5 required to, because we're a small city, we have a small  
6 plant. We're concerned there could be an upset if an  
7 industry discharges at higher levels than we can treat.  
8 So yes, we have a very strong pre-treatment program. And  
9 the purpose of that is to not allow any upsets to the  
10 plant. That's not to say someone can't illegally  
11 discharge when we're not around and dump something. You  
12 know, we're not there 24 hours a day watching. But we do  
13 as best as we can under EPA regulations, you know, oversee  
14 that pre-treatment program.

15 BOARD MEMBER HERMAN: Thank you. I had another  
16 one, but I said I would stop, so I won't.

17 CHAIRPERSON NAHAI: No. Go ahead and pose your  
18 question.

19 BOARD MEMBER HERMAN: So my question is, should  
20 this Board decide that in coming years we are going to  
21 also regulate for other substances, the citizens pay the  
22 tab. What's the bonding capacity of Burbank these days  
23 and how are these things getting paid for?

24 MR. ANDERSON: If we have to do upgrades, it  
25 would come through rate increases. City of Burbank

1 puts -- we generate our revenue through utility bills, not  
2 through property tax. We could bond. We've bonded  
3 recently for the upgrades I've showed you today. So we  
4 have issued a bond. We bonded for the 2000 upgrades. And  
5 we're about to pay that one off, but we're still going to  
6 be paying off the recent one we did for quite a few years  
7 now. Our bonding capacity is okay. But obviously when  
8 you have to pay those off, that's higher sewer rates for  
9 residents.

10 BOARD MEMBER HERMAN: Thank you very much.

11 Thank you, Mr. Chairman.

12 BOARD MEMBER CLOKE: My question is more about  
13 pre-treatment, and as you said earlier, preventative  
14 rather than curative from the point of view of the plan.  
15 I think Mr. Anderson answered those.

16 CHAIRPERSON NAHAI: Any other questions for  
17 Mr. Anderson?

18 Thank you so much.

19 Any further discussion between Board members on  
20 this?

21 CHAIRPERSON NAHAI: I'll move then adoption of  
22 the staff recommendation with one amendment, which is on  
23 page 14-214 in Section 12C. And that would be changing  
24 the word "may" to "shall" in that. I think it's in the  
25 first line of that section.

1 BOARD MEMBER VANDER LANS: Second.

2 CHAIRPERSON NAHAI: We have a motion. Do we have  
3 a second?

4 BOARD MEMBER CLOKE: And I'd like to add a  
5 friendly amendment to that that staff be directed to look  
6 at the public notification issue.

7 CHAIRPERSON NAHAI: All right. And you have  
8 sufficient direction there?

9 And all in favor?

10 (Ayes)

11 CHAIRPERSON NAHAI: Any opposed?

12 Okay. So that's carried unanimously.

13 Let me also just add to this, Mr. Anderson,  
14 wanted to thank you very much for your testimony here  
15 today. It was forthright and heartfelt and informative.  
16 And the decision here today -- I've followed what Burbank  
17 has done over the years. And you've done some truly  
18 exemplary things, and we hope you'll continue to do so.  
19 Thank you very much. All right. Thanks to staff for all  
20 of your hard work on this item.

21 (Thereupon Item 14 concluded.)  
22  
23  
24  
25

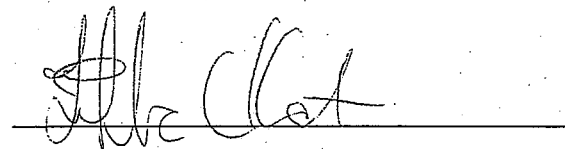
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day November, 2006.



TIFFANY C. KRAFT, CSR, RPR

Certified Shorthand Reporter

License No. 12277

**EXHIBIT C**

# Burbank Water Reclamation Plant

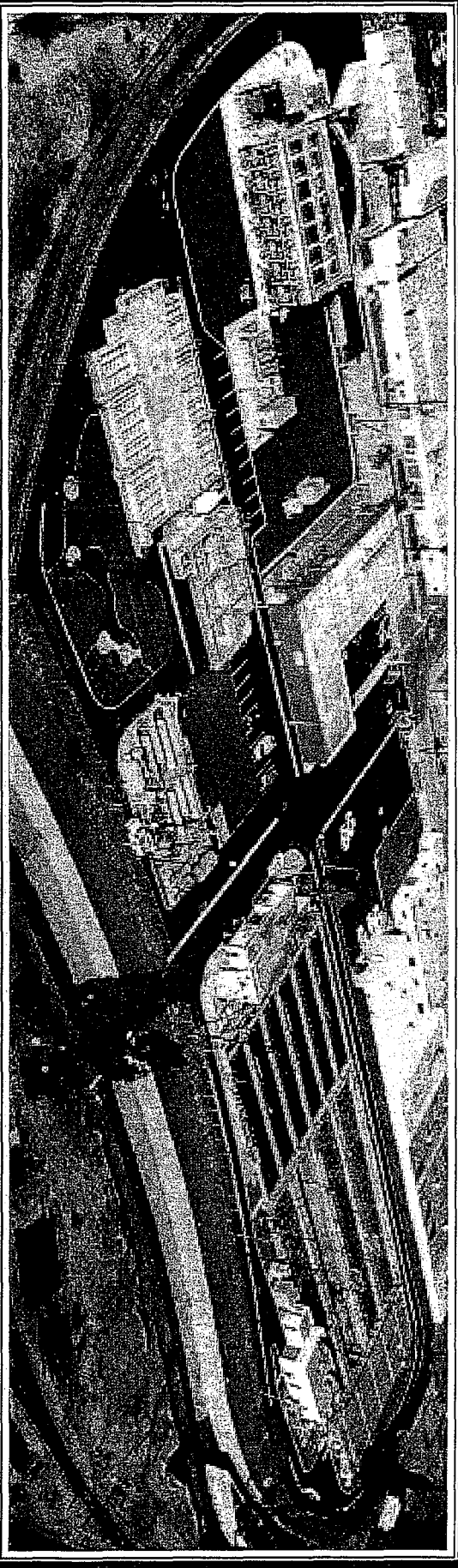
NPDES Permit Adoption

*November 9, 2006*

# BW/RP Background

- History of BW/RP
- Recent Upgrades
  - 2000– Operational Improvements
  - 2003– BNR Upgrade
  - 2005– Disinfection Modifications

# BWRP History



1966 – Built as a 6 MGD Water Reclamation Plant

1976 – Expanded to 9 MGD

1985 – Major process modifications